

NINETY-NINTH SESSION

Judgment No. 2434

The Administrative Tribunal,

Considering the second complaint filed by Mr J.T.B. against the World Health Organization (WHO) on 11 May 2004, the Organization's reply of 25 October, the complainant's rejoinder of 30 November 2004 and the WHO's surrejoinder of 13 January 2005;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. Facts relevant to this dispute are given in Judgment 2017, delivered on 31 January 2001, concerning the complainant's first complaint. It may be recalled that the complainant considers that he contracted onchocerciasis as a result of his work as a blackfly collector for the WHO's Onchocerciasis Control Programme between 1974 and 1978. In his first complaint he impugned the rejection of the appeal he had filed in 1998 with the Headquarters Board of Appeal following the decision to reject his claim for medical expenses. In the above-mentioned judgment, the Tribunal considered that the complainant had misunderstood the indications he had been given, as he had filed his internal appeal with the Board of Appeal instead of requesting the convening of a medical board. It therefore referred the case back to the Director-General, who was to regard the notification of intention to appeal which the complainant had filed with the Board of Appeal as an appeal of a medical nature.

Pursuant to Judgment 2017, a medical board was set up comprising the medical practitioner chosen by the complainant, the practitioner appointed by the Director-General, namely Dr D., and a third practitioner chosen by the other two. The complainant was examined in December 2001. In its report dated 17 January 2002, the medical board concluded that it could not "objectively establish a link between [the complainant's] work as a blackfly collector and [his] eye disorder". On the basis of this report the Advisory Committee on Compensation Claims recommended rejecting the complainant's claims for his eye disorder to be considered a service-related illness and for financial compensation. The complainant was informed, by letter dated 9 September 2002, that the Director-General had endorsed that recommendation.

The Headquarters Board of Appeal, to which the case was referred, issued a report on 26 November 2003 pointing out that Dr D. had "on many occasions" stated that the complainant did not suffer from onchocerciasis. Although it had found no evidence of bias on the part of the practitioner, it considered it "unacceptable" that he should be asked "to deal with the same case twice". The Board of Appeal recommended that a new medical board be constituted, that all costs related to this board be assumed by the WHO, and that the expenses incurred by the complainant for the purposes of his appeal be fully reimbursed. In a letter of 30 January 2004, which constitutes the impugned decision, the Director-General informed the complainant that he was prepared exceptionally to accept that recommendation.

B. The complainant begins by explaining that his complaint in no way "opposes" the arrangements made in his favour by the Director-General, but that his aim is rather for the Tribunal to order the WHO to "give effect" to his claim for compensation within a reasonable time and put an end to his "ordeal".

He then criticises the proceedings before the medical board in several respects, alleging in particular that the practitioners relied on documents provided by the Organization which were out of date. He expresses satisfaction, on the other hand, with the Director-General's decision to put an end to Dr D.'s "omnipresence".

As it was agreed that the costs of his second appeal were to be refunded, the complainant requests that those related to his first appeal also be "taken into consideration". In addition, he seeks financial compensation for the costs he incurred for the examinations he underwent in 1994 and in December 2001.

The complainant puts forward the following claims:

- “– Implementation within a reasonable time of the arrangements decided by the Director-General of the WHO.
- Actual appearance of the complainant for further examination by the medical board with travel and accommodation expenses paid for by the WHO.
- Final decision regarding compensation.”

C. In its reply the Organization asserts that the complainant, who is challenging a decision in his favour, is really aiming to have the costs of his second appeal refunded and a new medical board convened within a reasonable time.

The WHO submits that the complaint is irreceivable on several counts. It argues that the complaint would be receivable only if the complainant were challenging the decision to refund the above-mentioned costs or to convene a new medical board, since no other challenge would meet the requirement that all internal remedies be exhausted. It contends that the case law whereby a complainant must not only appeal to an internal body but must also await the decision on his appeal before filing a complaint with the Tribunal applies by analogy to proceedings before the medical board and the Advisory Committee. It points out that prior to filing his complaint the complainant did not enquire about what action had been taken pursuant to the decision of 30 January 2004. The conditions for direct appeal to the Tribunal, as laid down in the case law, have therefore not been met and the complaint is premature.

According to the WHO, since the decision of 30 January 2004 is already “partly executed and partly in the course of execution”, the complainant has no cause of action. It recalls that on 18 October 2004 the financial services were instructed to refund the costs arising from the second appeal and that a new medical board is being convened. The Organization admits that the convening of the board is somewhat overdue but maintains that the delay is involuntary and that it is making every effort to have the complainant’s case examined rapidly. It intends to appoint an onchocerciasis specialist who has not yet been involved in the case as soon as possible, but finding the right person is taking time. It concludes from the above arguments that the complainant has no cause of action.

Furthermore, the WHO considers that the Tribunal is not competent to deal with the complainant’s claims. It recalls in particular that the Tribunal cannot issue orders to an organisation.

The WHO also contends that the complainant’s claims for the refunding of the costs of his first appeal and medical examinations are irreceivable on the grounds that they have not been filed previously and are now time-barred.

It adds that it will not object if the complainant withdraws his complaint in order to allow the procedure to take its course.

D. In his rejoinder the complainant states that he refuses to follow the “tiresome procedure” demanded by the WHO. Expecting him to withdraw his complaint would be tantamount to subjecting him to a “tough ordeal”. He hopes that in view of “[his] serious condition” the Tribunal will compel the Organization to expedite his case considering that, almost four years after the delivery of Judgment 2017, “there is still not even a sign of a settlement”.

E. In its surrejoinder the WHO reports that it has appointed a practitioner to sit on the medical board, but that the complainant has refused to appoint one on the grounds that he is awaiting instructions from the Tribunal. It hopes, nevertheless, that the complainant will choose a practitioner very soon, since otherwise the procedure can go no further.

The defendant adds that, in a letter of 30 November 2004, the complainant confirmed that the costs of his second appeal had been refunded and claimed financial compensation for the costs he incurred in 1994, 1998 and 2001. This claim was rejected on 10 January 2005 on the grounds that it was both unfounded and time-barred.

CONSIDERATIONS

1. In Judgment 2017 delivered on 31 January 2001, the Tribunal gave a ruling on the first complaint filed by

the complainant, a former WHO staff member who maintained that the eye problems he had contracted were due to the work he had accomplished for the Onchocerciasis Control Programme in West Africa, as a collector of insects that were vectors of the disease. The Tribunal considered at the time that, contrary to the view held by the Organization, the latter should have responded to the complainant's grievance, which was of a medical nature, by setting up and consulting a medical board in accordance with the provisions of paragraph 29 of Annex E to Part II, section 7, of the WHO Manual. The case was sent back to the Director-General for a new decision on the medical claim raised by the complainant.

2. Following that judgment, a medical board was set up. It met in Abidjan (Côte d'Ivoire) in December 2001 and submitted a report to the Advisory Committee on Compensation Claims. The Committee recommended that the Director-General reject the complainant's claim for financial compensation. The Director-General decided to accept that recommendation and, by a letter dated 9 September 2002 but received by the complainant only on 7 January 2003, the latter was informed that the Director-General's decision took account "of the medical board's conclusion whereby it could not objectively establish a link between [the complainant's] duties as blackfly collector and [his] eye disorder".

3. The complainant filed an appeal against that decision with the Headquarters Board of Appeal, complaining in particular of the bias allegedly harboured against him by Dr D. – the practitioner appointed by the Organization – and of the fact that the practitioner whom he himself had chosen was not qualified to deal with ophthalmological problems. In its report of 26 November 2003, the Headquarters Board of Appeal found that, while all three practitioners making up the medical board were "properly qualified", Dr D., as director of the Onchocerciasis Control Programme in West Africa, had already on several occasions expressed the opinion that the complainant was not suffering from onchocerciasis, so that, even though there was no evidence of bias on his part, it was "inappropriate" for him to sit on the medical board. It therefore recommended that a new medical board comprising three other practitioners be set up at the WHO's expense, and that the legal costs of the complainant's internal appeal be refunded.

4. While indicating that there were grounds for rejecting the recommendation of the Board of Appeal, the Director-General informed the complainant on 30 January 2004 that exceptionally, in view of all the circumstances of the case, he had decided to accept the Board's recommendation, convene a new medical board at the Organization's expense and allow the "legal fees" incurred for the complainant's appeal to be refunded.

5. It is this decision of 30 January 2004 which is challenged before the Tribunal by the complainant, whose claims are set out under B, above.

6. Insofar as the complaint seeks the quashing of the decision of 30 January 2004, it is clearly irreceivable, as argued by the Organization, because that decision allowed the appeal filed by the complainant, who acknowledges that his "complaint in no way opposes the arrangements made in [his] favour by the Director-General".

7. What the complainant really wants is for the Tribunal to give a ruling on his case immediately or, at any event, to instruct the WHO to settle his claim "within a reasonable time". To this the Organization replies, quite rightly, that the procedure currently under way has to follow its course, which will be possible only when the complainant has chosen a practitioner to sit on the future medical board. The Tribunal, for its part, can but encourage the complainant to make that choice so that the new medical board may be convened and so that the procedure to determine his rights, which has already lasted too long, may be concluded.

8. Regarding the costs incurred in the course of proceedings, the complainant has already obtained the refund of the costs of the second appeal and does not dispute the amount. He is claiming reimbursement of the costs of his first appeal as well as of those incurred for his visits to Abidjan in 1994 and in December 2001. As these claims have been filed for the first time before the Tribunal, they must be dismissed, since the complainant has not exhausted all available internal remedies.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 28 April 2005, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Judge, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 July 2005.

Michel Gentot

Seydou Ba

Claude Rouiller

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 14 July 2005.